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**Supreme Court of the United States**

OCTOBER TERM, 1948.

No. 271

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In the Matter of the Criminal Contempt Charge

—against—

ROBERT CARUBA.

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**REPLY TO BRIEF IN OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI.**

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TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE  
JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioner respectfully shows:

The only purpose in filing this reply brief is to correct some of the misstatements and misapprehensions in the brief in opposition to the petition for a writ of certiorari filed by the respondent.<sup>1</sup> In order to save the Court's time, we deal with those errors *seriatim*.

1. As pointed out in the petition (p. 8, n. 3) the alleged misconduct of Caruba here at issue relates neither to the alleged destruction of evidence nor to the disobedience of

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<sup>1</sup> We also wish to advise the Court that since the writing of the petition for writ of certiorari, the Vice-Chancellor has issued a decree dismissing complainant's bill in the main case because of "unclean hands."

court orders.<sup>2</sup> Only the contradictory statements provided the basis for the contempt judgment.

2. Respondent suggests that it was necessary for petitioner to appeal simultaneously to the Court of Errors and Appeals and to the Chancellor from the contempt order issued by the Vice-Chancellor. It is a novel and shocking proposition that any person should have to appeal to two separate courts at the same time from a single judgment. No New Jersey statute or judicial precedent would justify or even indicate such a procedure. Petitioner did all he could under the New Jersey procedure as indicated in the marginal excerpt from the petition of appeal to the Chancellor.<sup>3</sup> Indeed, until now there has been no suggestion in this case that the appeal to the Chancellor, following upon the decision by the Court of Errors and Appeals, was untimely, and the Chancellor did not so hold.

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<sup>2</sup> Particularly prejudicial is respondent's reference to another contempt proceeding. That proceeding was for civil contempt. On advice of counsel petitioner refused to yield certain records which it was believed would reveal a secret process. The refusal was made pending an application to the Vice-Chancellor for a ruling. Petitioner was nevertheless held in civil contempt. On appeal by the corporate defendant from the order of discovery under which these records were demanded, complainant withdrew its demand, and the civil contempt became moot.

<sup>3</sup> "Following the entry of the said order under review, petitioner prosecuted an appeal to the New Jersey Court of Errors and Appeals. Prior to instituting the said appeal petitioner, by his counsel, advised the Chancellor of the proceedings and of the doubt as to whether jurisdiction to review existed in the Chancellor or in the New Jersey Court of Errors and Appeals. The said doubt arose out of the question whether the alleged contempt was committed in the presence of the Court of Chancery or elsewhere than in the presence of the Court of Chancery. If the alleged contempt was committed in the presence of the Court of Chancery then the New Jersey Court of Errors and Appeals was without jurisdiction to review the judgment on its merits and the sole power to review was vested in the Chancellor. Petitioner believing that the alleged contempt was committed elsewhere than in the presence of the Court of Chancery, stated to the Chancellor that he would prosecute said appeal to the New Jersey Court of Errors and Appeals, but that if the New Jersey Court of Errors and Appeals should hold that the contempt was committed in the presence of the Court of Chancery your petitioner would thereupon pray for a review by the Chancellor pursuant to the authority hereinabove mentioned." (R. 2205-2206)

3. Obviously, since petitioner is still in jeopardy of a jail sentence, the case has not become moot. Moreover, the amendment of N. J. R. S. 2:15-13 since the filing of the petition for a writ of certiorari merely conforms the procedure to the constitutional reform. Though new courts with new titles have replaced the old, jurisdiction over the issues raised in this case has not been destroyed.

4. Respondent does not claim that the decision of the New Jersey Court of Errors and Appeals was not completely unanticipated. Indeed, he could not so claim in the face of the New Jersey statutes. He merely claims that a court passed upon all of petitioner's claims. But, of course, it is as much a deprivation of due process when a court of limited jurisdiction without prior notice exceeds the limits of its jurisdiction, usurps the power of another court, and passes upon claims which it has no authority to consider, as it is for a court to deny all review. Due process and equal protection of the law require not appellate caprice but orderly procedure.

5. Respondent asserts that in New Jersey obstruction is not a necessary element of contempt. We believe that the decision of the Court of Errors and Appeals in the present case establishes that obstruction is a vital element. If it is, the absence of any charge or finding of obstruction in the trial court gives rise to one of the federal questions. But if respondent is correct in his interpretation of New Jersey law, we contend (pp. 18-19) that the federal Constitution makes obstruction a necessary element.

6. The relationship of the Chancellor and the Court of Errors and Appeals, so far as is revealed by the New Jersey statutes relating to review of contempt proceedings, was not that of subordinate and superior but rather of mutually exclusive jurisdictions depending on whether or not the contempt was *in facie curiae*. If, as is contended by respondent, in contempt proceedings the Chancellor is always subject to

review by the highest court of New Jersey, that court has jurisdiction to hear the appeal now pending before it. That question, however, cannot be resolved until the Supreme Court of New Jersey acts on the appeal. Nor can the question whether the remittitur of the Court of Errors and Appeals was intended to adjudicate the merits be resolved until its successor, the Supreme Court of New Jersey, interprets that remittitur.<sup>4</sup>

#### **CONCLUSION.**

For the reasons set forth in the petition for a writ of certiorari, it is respectfully submitted that this case is one calling for the exercise by this Court of its jurisdiction by writ of certiorari.

Respectfully submitted,

**THOMAS J. BROGAN,  
JACOB L. NEWMAN,  
JOSEPH WEINTRAUB,  
PHILIP B. KURLAND.**

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<sup>4</sup> The remittitur, as pointed out in the petition (p. 11, n. 8), both affirmed the conviction and dismissed the appeal. There was no question of the power of the Court of Errors and Appeals to review the jurisdiction of the Vice-Chancellor as a matter of common law. So much of the remittitur as affirmed may, therefore, relate only to this power and the dismissal may relate to the merits.